

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 226, “Sale or Rental of Farm Machinery and Equipment,” Iowa Administrative Code.

The subject matter of rule 701—226.1(423) is the exemption for farm machinery and equipment and items used in agricultural production attached to and towed by self-propelled implements of husbandry. The proposed amendment in Item 1 exempts from sales tax, and defines, snow blowers, rear- or front-mounted blades, and rotary cutters if they are used in agricultural production and are to be attached to or towed by a self-propelled implement of husbandry.

The subject matter of rule 701—226.19(423) is nonexclusive lists of items that are taxable or exempt. The proposed amendments in Items 2 and 3 clarify that certain items drawn or attached to self-propelled farm implements are exempt only if the items are directly and primarily used in agricultural production or dairy or livestock production.

These amendments are proposed as a result of 2012 Iowa Acts, House File 2470.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that the proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 5, 2012, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 23, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 23, 2012.

After analysis and review of this rule making, a positive impact on jobs exists. This rule making implements a tax exemption that benefits farmers and small businesses by providing an exemption for specific machinery and equipment used in agricultural production. The exemption will allow farmers to buy three specific types of machinery and equipment tax free, and, as a result, farmers will buy more of this equipment. This increased demand for these three specific types of machinery and equipment will, in turn, cause small businesses that sell the exempt machinery and equipment to hire more employees. Thus, a positive impact on jobs exists.

These amendments are intended to implement 2011 Iowa Code Supplement section 423.3(8) as amended by 2012 Iowa Acts, House File 2470.

The following amendments are proposed.

ITEM 1. Amend rule 701—226.1(423) as follows:

701—226.1(423) Sale or rental of farm machinery and equipment and items used in agricultural production that are attached to a self-propelled implement of husbandry. The sales price from the sale or rental of farm machinery and equipment directly and primarily used in production of agricultural products and certain items used in agricultural production that are attached to or towed by a self-propelled implement of husbandry is exempt from sales and use tax.

226.1(1) Farm machinery and equipment.

a. Exempt. ~~To~~ Under this rule, to be eligible ~~under this rule~~ for the exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

(1) to (5) No change.

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn by or attached to a vehicle subject to registration, an auxiliary attachment for a vehicle subject to registration, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle subject to registration is not eligible for the exemption allowed under this rule.

226.1(2) Attachments to self-propelled implements of husbandry.

a. Exempt. Exempt from the tax under this rule are the following items if, and only if, they are used in agricultural production:

(1) A snow blower that is to be attached to a self-propelled implement of husbandry; or

(2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry; or

(3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

b. Used in agricultural production. Under this subrule, the items must be used in agricultural production, and not “directly and primarily” used in production of agricultural products as is required under subrule 226.1(1).

EXAMPLE: Farmer Jones purchases a front-mounted blade that will be attached to a self-propelled implement of husbandry (e.g., farming tractor). Farmer Jones primarily uses the blade to prepare previously uncultivated land—a use that is not for agricultural production. See subrule 226.1(3). However, Farmer Jones sporadically uses the front-mounted blade for agricultural production. Even though Farmer Jones does not directly and primarily use the front-mounted blade in agricultural production, the front-mounted blade is exempt from sales or use tax because the blade is occasionally used in agricultural production and it is attached to a self-propelled implement of husbandry.

226.1(2) 226.1(3) Definitions and specific provisions. For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—211.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. ~~Not~~ Nonexclusive examples of items not included within the meaning of the term “agricultural production” is are the clearing or preparation of previously uncultivated land, the creation of farm ponds, ~~or and~~ the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be ~~built~~ repaired to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to ~~construct~~ repair the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. *Self-propelled implement.* The term “self-propelled implement” means an implement which is capable of movement from one place to another under its own power. An implement is not self-propelled merely because it has moving parts. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. *Implements customarily drawn or attached to self-propelled implements.* The following is a nonexclusive, representative list of implements ~~which are~~ customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

e. and f. No change.

g. *Beginning and end of agricultural production.* Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply to Farmer Brown’s tractor and wagon. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed for the elevator’s tractor and wagon.

h. *Grain dryer.* The term “grain dryer” includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term “grain dryer” does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement and is directly and primarily used in agricultural production.

i. No change.

j. *Implement of husbandry.*

(1) The term “implement of husbandry” means any tool, equipment, or machinery necessary to the carrying on of the business of agricultural production and without which that could not be done. To be an implement of husbandry, the following must both be true:

1. The tool, equipment, or machine must be necessary to the carrying on of the business of agricultural production; and

2. Agricultural production must be impossible without the use of the tool, equipment, or machine.

(2) Whether a given item is an implement of husbandry depends on the facts of each particular case (Hester v. State, 108 So.2d 385, 388 (1959)), and in each particular case the person claiming the exemption has the burden of proving that the person is entitled to the exemption. Dial Corp. v. Iowa Dep’t of Revenue, 634 N.W.2d 643, 646 (Iowa 2001).

k. *Snow blower.* “Snow blower” as used in this rule means an attachment that has the primary purpose of snow removal by the throwing of snow and that is ordinarily thought of as a snow blower.

l. Rear-mounted or front-mounted blade. “Rear-mounted or front-mounted blade” as used in this rule means a stationary attachment that has a primary purpose of pushing or leveling, for example, sand, dirt, snow, gravel, or manure. The term “rear-mounted or front-mounted blade” does not include mounted buckets or loaders that have a primary purpose of loading or digging.

m. Rotary cutter. “Rotary cutter” as used in this rule means an attachment used for mowing of grassy areas, pastures, and brush, but does not include attachments often referred to as “finishing mowers” and “mid-mount mowers.”

~~226.1(3)~~ **226.1(4)** *Taxable and nontaxable transactions.* The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. No change.

b. A lessor’s purchase of a snow blower, rear-mounted or front-mounted blade, or rotary cutter is not subject to tax if such item is leased to a lessee who uses the item in agricultural production and the item will be attached to an implement of husbandry.

~~b. c.~~ c. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

d. The owner or lessee of a snow blower, rear-mounted or front-mounted blade, or rotary cutter need not be a farmer as long as the snow blower, rear-mounted or front-mounted blade, or rotary cutter is used in agricultural production and the snow blower, rear-mounted or front-mounted blade, or rotary cutter is attached to an implement of husbandry.

~~e. e.~~ e. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified for an exemption under this rule.

f. The sale or lease, within Iowa, of any snow blower, rear-mounted or front-mounted blade, or rotary cutter which is used, outside of Iowa, in agricultural production while attached to an implement of husbandry is a transaction eligible for the exemption, if the transaction is otherwise qualified for an exemption under this rule.

~~226.1(4)~~ **226.1(5)** *Auxiliary attachments.* The following is a ~~noninclusive~~ nonexclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code subsections 423.3(8) and 423.3(11).

ITEM 2. Amend the footnote for subrule **226.19(1)** as follows:

*Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in agricultural production or, if portable, used directly and primarily in agricultural production.

ITEM 3. Amend footnote number “1” for subrule **226.19(2)** as follows:

¹Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in dairy or livestock production or, if portable, used directly and primarily in dairy or livestock production.

ITEM 4. Amend **701—Chapter 226**, implementation sentence, as follows:

This rule is intended to implement Iowa Code subsection 423.3(8) as amended by 2012 Iowa Acts, House File 2470, and subsections 423.3(6) and 423.3(11).